

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

IZHAN RICKS, #1462332,

Petitioner,

v.

Civil Action No. 2:21cv378

**HAROLD W. CLARKE, Director,
Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254 submitted by *pro se* Petitioner Izhan Ricks (“Ricks” or “Petitioner”). The petition alleges violation of petitioner’s constitutional rights pertaining to his 2019 convictions and sentencings in the Virginia Beach Circuit Court for burglary, robbery, use of a firearm in the commission of a felony, conspiracy to commit a felony, and possession of a firearm by a violent felon. As a result of the convictions, Petitioner was sentenced to serve a prison term of forty years, with all but fifteen years suspended.

The petition was referred to a United States Magistrate Judge for Report and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge’s Report and Recommendation was filed January 6, 2022, finding Ricks’ claims are procedurally defaulted, and that such default cannot be excused. The first page of the Report contained a scrivener’s error suggesting that Ricks’ habeas petition be dismissed “without prejudice.” The analysis in the Report, as well as the formal Recommendation stated in Part III, recommended dismissal of the petition “with prejudice.” The Report and Recommendation advised

each party of his right to object and the time limit for doing so. On January 11, 2022, Respondent filed an objection to the Report only with regard to the erroneous reference of dismissal “without prejudice” on page one of the Report and Recommendation. Petitioner filed no objections, nor did he respond to the Government’s objection, and the time for filing objections or responding have both now expired.

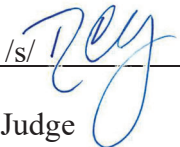
The Court, having reviewed the record and examined the objection filed by the Respondent to the Magistrate Judge's Report and having made *de novo* findings with respect to the portion objected to, does hereby adopt and approve the findings and recommendations set forth in Part III of the Report and Recommendation filed January 6, 2022. It is therefore ORDERED that Respondent’s Objection to the Magistrate Judge’s Report and Recommendation (ECF No. 18) is SUSTAINED, Respondent’s Motion to Dismiss (ECF No. 14) is GRANTED, and Ricks’ petition is hereby DENIED and DISMISSED WITH PREJUDICE.

Finding that the basis for dismissal of Petitioner’s § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a “substantial showing of the denial of a constitutional right,” a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of**

appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk is directed to mail a copy of this Final Order to Petitioner and to provide an electronic copy of the Final Order to counsel of record for Respondent.



/s/ Roderick C. Young
United States District Judge

Richmond, Virginia
Date: February 9, 2022